

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF JUNE

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 13079 of 2002

Between:

Shamanthula Rajaiah, S/o.Sailu, Age:51 Yrs., Occ:Agrl., R/o.Palamkula
Village, Nangunoor Mandal, Medak District.

..... PETITIONER

AND

1. Vardolu Ashaiah, S/o.Mallaiah, Age:49 Yrs., Occ:Agrl.,
2. The Election Officer, Stage-II, Sri P.Narsimha Reddy, Primary
School, Giraipally Village, Kondapak Mandal, Medak Dist.,
3. Dumbala Narsaiah, S/o.Bhoomaiah, Age:41 Yrs.,
4. Dumbala Sreenivas, S/o.Mallaiah, Age:31 Yrs.,
5. Ranga Ramesh, S/o.Bhoomaiah, Age:26 Yrs.,
6. Shila Narayana, S/o.Bal Marsaiah, Age:37 Yrs.,
7. The Junior Civil Judge-cum-Election Tribunal, Siddipet, Medak
Dist.,

(Respondents 1, 3 to 6 are residents Palamakula Village, Nangunoor
Mandal, Medak District.)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of writ of *Mandamus* declaring the order of the respondent No.7 in O.P.No.7 of 2001, dated 4-7-2002 as arbitrary, illegal and contrary to the provisions of the Andhra Pradesh Panchayat Raj Act, 1994 and the Andhra Pradesh Panchayat Raj Conduct of Elections Rules, 1994 and consequently set aside the order of the respondent No.7 in O.P.No.7 of 2001 dated 4-7-2002 and be pleased to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.A.Sudershan Reddy

Counsel for Respondent No.1: Mr.D.Jagan Mohan Reddy

Counsel for Respondents 2 to 7: None appeared.

The Court made the following Order:

The present writ petition is filed seeking a writ of Mandamus to declare the order dated 04-07-2004 passed by respondent No.7-Junior Civil Judge-cum-Election Tribunal, Siddipet, Medak District as illegal and arbitrary.

The brief facts which led to filing of this writ petition are as follows:

The petitioner, first respondent and respondents 3 to 6 contested the election to the office of Sarpanch, Palamakula Gram Panchayat of Nangunoor Mandal, Medak District. The petitioner was elected by a margin of three votes. Alleging that several irregularities have taken place during the course of counting, the first respondent filed O.P.No.7 of 2001 for recounting, which was allowed on 4-7-2002. Consequently recounting of votes was undertaken on 6-7-2002, in which petitioner and first respondent secured equal number of votes. In view of the same the respondent No.7-Tribunal set aside the election of the petitioner directing the Election Officer to follow the procedure for declaration of election. Assailing the same, the present writ petition is filed.

The first respondent herein examined himself as P.W.1 and examined another witness on his behalf as P.W.2 and got marked Exs.A1 to A4, whereas, the petitioner herein examined himself as R.W1 and examined another witness as R.W.2 on his behalf and no documents were marked.

The Lower Court accepted the evidence adduced by the petitioner herein in regard to the request made by him for recounting the ballot votes on the same day of counting, but the Election Officer, Chief

Election Officer though promised that recounting will be made on the next day morning, declared the election of the petitioner as Sarpanch for the Office of the Gram Panchayat. Before the Lower Court, petitioner contended that the polled votes are only 1679 and when the results declared by the Election Officer, the total votes comes to 1682 i.e. three votes more than the polled votes and there is no explanation as to how the excess three votes came. In view of the same, a representation was made for recounting the votes.

The lower Court, after accepting the version of the petitioner in the light of the evidence, allowed the petition for recounting the votes and directed the Election Officer to be present in the Court on 06-07-2002 along with all material for recounting the votes polled in the presence of both the counsel and the parties and accordingly, they have undertaken for recounting the votes polled on the said date, for which, the counsel for the petitioner filed a petition with regard to one vote in serial No.0028218 which was kept aside as invalid vote requesting that the same should be counted in favour of the petitioner. After hearing the arguments of the counsel, the Court below rejected the said ballot paper stating that as per the Rule 34(2)(a)(b) of Conduct of Election Rules, 1961 if it bears any mark or writing by which the elector can be identified, the same has to be rejected. As a result, both the candidates got equal number of votes. Accordingly, the Court below directed the Election Officer to follow the next procedure for declaring the candidates in accordance with the rules by an order dated 12-07-2002 ordering recount.

Curiously, the petitioner has not chosen to challenge the subsequent order dated 12-07-2002, but however, challenged the order made on 04-07-2002.

Learned Counsel for the petitioner contends that 3 votes counted in favour of the petitioner were wrongly rejected by the Election Officer during the course of recounting the votes and even if one vote is invalidated, still he got two votes more than the total votes polled in

favour of first respondent and in view of the same, the recount undertaken is contrary to the Rules and Regulations. I see no force in the submission made by the learned counsel for the petitioner. When the Court below ordered for recounting the votes, the petitioner has not chosen to challenge the order of recount initially, but participated at the time of recounting along with the counsel and objected with regard to the invalidating of one vote and when the petitioner and the first respondent got secured equal votes, arguments were advanced on invalidating the said vote casted in favour of the petitioner, which was not accepted by the Court below and directed the Election Officer to follow the subsequent procedure required to declare the election results.

Having regard to the fact that once jurisdiction to order recount found to have rightly exercised, in view of invalidating votes earlier counted in favour of the petitioner is evident at the time of recount and the petitioner participated in the recount without any demur, it is not open for him to challenge the order, ordering recount. In view of the same, I see no infirmity or illegality in ordering recounting of votes polled in the light of evidence adduced by the parties warranting interference.

The writ petition is accordingly dismissed. No costs.

18-06-2004

To

1. The Election Officer, Stage-II, Sri P.Narsimha Reddy, Primary School, Giraipally Village, Kondapak Mandal, Medak Dist.,
2. The Junior Civil Judge-cum-Election Tribunal, Siddipet, Medak Dist.,
3. Two C.D. copies.

